



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

JRE
Docket No: 5696-99
28 August 2000

[REDACTED]

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 24 August 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the advisory opinion furnished by the Director, Naval Council of Personnel Boards dated 17 February 2000, a copy of which is attached.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice. In this connection, the Board substantially concurred with the comments contained in the advisory opinion. Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official

records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director

Enclosure



DEPARTMENT OF THE NAVY
NAVAL COUNCIL OF PERSONNEL BOARDS
WASHINGTON NAVY YARD
720 KENNON STREET SE RM 309
WASHINGTON, DC 20374-5023

IN REPLY REFER TO

5420
Ser: 00-003
17 Feb 00

From: Director, Naval Council of Personnel Boards
To: Chairman, Board for Correction of Naval Records

Subj: COMMENTS AND RECOMMENDATION IN THE CASE OF [REDACTED]
[REDACTED]

Ref: (a) Chairman, BCNR JRE:jdh DN: 5696-99 ltr of 15 Nov 99
(b) SECNAVINST 1850.4D

1. This responds to reference (a), received on 8 December 1999, for comments and recommendation regarding Petitioner's request for correction of his record to show that he was retired by reason of physical disability. We have determined that Petitioner's case was not rejected for review by the Physical Evaluation Board (PEB) because of the PFIT rule. Instead, it appears the PEB declined review of his case on 6 April 99 because Petitioner had been transferred to the Fleet Reserve one week earlier (31 March 1999). Member's retirement precluded PEB consideration of his Medical Evaluation Board (MEB). **In our final analysis, we found the Petitioner fell within the Presumption of Fitness (PFIT) rule of reference (b) and therefore did not rate a medical retirement.**

2. The Petitioner's case history and medical records, contained in reference (a), were thoroughly reviewed in accordance with reference (b) and are returned. The following comments are provided.

3. Petitioner's record is not clear on his functional work capacity prior to his retirement; however, the Department of Veterans Affairs (DVA) set it at 4 METs in its 13 October 1999 Rating Decision which would justify such an award under VASRD Code 7006-7005.

4. Per paragraph 3305 c.(1)(a) of reference (b), the PFIT rule is overcome if the "natural progression" of that condition results in sufficient deterioration as to warrant the rating of 60%. In this case, accepting that Petitioner might well have otherwise have been found to be both 'Unfit' and ratable at the 60% later awarded by the DVA, his continued smoking of tobacco products--mostly cigarettes--despite intense and repeated medical admonition would have been viewed as having 'accelerated'

Subj: COMMENTS AND RECOMMENDATION IN THE CASE OF [REDACTED]
[REDACTED]

the progression of his condition to the point of departure from the course of natural progression. Hence, his PEB rating would likely have been reduced accordingly. There are multitudes of admonitions against smoking in Petitioner's Health Record dating back to 23 October 1986 with most occurring in the context of respiratory illnesses but with a burst of such occurrences with the onset of, and due to his cardiovascular manifestations approximately 29 December 1997. The latter had included offers of specific treatment, including Bupropion and Cessation Program participation to little or no avail. The preponderance of evidence suggests that the concluding consequences, including the progressive deterioration of Petitioner's non-grafted coronary arteries noted by the DVA, has been accelerated by his smoking and, hence, placed such beyond the parameters of natural progression.

5. It is our opinion that Petitioner's heart condition would have rated significantly less than the 60% awarded by the DVA had he complied with medical admonitions not to smoke. Thus per paragraph 3802.c of reference (b), it is concluded that even when combined with the rating for Petitioner's post-TIA state, his rating would not have overcome the PFIT rule as noted above.

6. In summary, although an error may have occurred by not processing his MEB through the PEB, it was harmless. Given the facts of his case, member would not have received a disability retirement from the PEB given the presumption of fitness rules, and therefore I recommend that his petition be denied.


W. F. ECKERT